

# In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 133

UNITED STATES OF AMERICA, APPELLANT

v.

THIRTY-SEVEN (37) PHOTOGRAPHS, MILTON LUROS,  
CLAIMANT

## APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

The following portions of the record appear herein in chronological sequence:

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## **RELEVANT DOCKET ENTRIES**

The complaint for forfeiture dated November 5, 1969, and filed November 6, 1969

The answer and counterclaim dated November 13, 1969, and filed November 14, 1969

The notice of motion to convene a three-judge court dated November 13, 1969, and filed November 14, 1969

Stipulation of parties as to when motion to convene a three-judge court may be heard dated November 13, 1969, and filed November 14, 1969.

Order continuing the hearing on the motion to convene a three-judge court dated November 17, 1969, and filed the same date

Order granting the convening of a three-judge court dated November 18, 1969, and filed on the same date

Stipulation of parties as to filing dates for briefs dated November 18, 1969, and filed November 20, 1969

Order of three-judge court directing the matter submitted dated January 9, 1970, and filed on the same date

United States District Court Central District of California

Civil No. 69-2242F

UNITED STATES OF AMERICA, PLAINTIFF

v.

THIRTY-SEVEN (37) PHOTOGRAPHS, DEFENDANT

### **COMPLAINT FOR FORFEITURE**

For its claims against the defendant photographs, the United States of America alleges as follows:

#### **I.**

That this Court has jurisdiction under 28 U.S.C. § 1345 and 19 U.S.C. § 1305.

#### **II.**

That on October 24, 1969, the defendant photographs were brought into the United States by Milton Luros.

## III.

That the defendant photographs are obscene which fact makes the defendant photographs subject to seizure and forfeiture under the provisions of 19 U.S.C. § 1305.

## IV.

That on October 24, 1969, the defendant photographs were seized by duly authorized Customs Agents in Los Angeles, California, within the jurisdiction of this Court.

## V.

That the defendant photographs are in the possession of the United States Attorney's Office, United States Court House, Room 1127, 312 North Spring Street, Los Angeles, California, 90012, or elsewhere within the jurisdiction of this Court.

WHEREFORE, the United States prays that due process issue to enforce the forfeiture of the defendant photographs and that due notice of these proceedings be given to all interested parties.

WM. MATTHEW BYRNE, Jr.,  
*United States Attorney.*  
 FREDERICK M. BROGIO, Jr.,  
*Asst. U.S. Attorney*  
*Chief, Civil Division.*

LARRY L. DIER,  
*Asst. U.S. Attorney,*  
*Attorneys for Plaintiff,*  
*United States of America.*

United States District Court Central District of California

Civil No. 69-2242-F

UNITED STATES OF AMERICA, PLAINTIFF

v.

THIRTY-SEVEN (37) PHOTOGRAPHS, DEFENDANTS

MILTON LUROS, CLAIMANT

ANSWER AND COUNTER-CLAIM

COMES NOW the defendants and claimant, and allege as follows:

## I

Denies that the photographs mentioned in Paragraph III of the Complaint are obscene and, in this connection, allege that the said photographs were to be part of the ancient and highly acclaimed book *The Kama Sutra of Vatsyayana*, which book has been distributed widely throughout the Nation, and which book has been acclaimed as a work of great value. The photographs are part and parcel of the said work, and integral to the book. The photographs independently and as part of the contemplated book plainly have social value, and appeal only to the normal curiosity the average person has in matters pertaining to sex, and do not appeal to the prurient interest of the average person in the Nation as a whole. Moreover, the said photographs independently and as part of the contemplated book are within customary limits of candor in the Nation as a whole. Heretofore, Customs has passed like works which are generally circulating throughout the Nation.

## AFFIRMATIVE DEFENSE

## II

The Court lacks jurisdiction because the statute under which the Complaint was brought, Title 19 U.S.C. 1305, is, on its face and as construed and applied, unconstitutional, null and void for the following reasons:

A. It violates rights guaranteed to the defendants and claimant under the free speech and press and due process provisions of the First and Fifth Amendments to the United States Constitution, in that it purports to exclude from the United States photographs to be used in a book limited to sale to adults and advertised in a tasteful fashion which will not invade the sensibilities or privacy of the general public.

B. It violates the rights guaranteed to the defendants and claimant under the free speech and press and due process provisions of the First and Fifth Amendments to the United States Constitution, in that it fails to provide adequate procedural safeguards against undue suppression of protected expression by failing to provide for speedy judicial determination.

C. It violates rights guaranteed to the defendants and claimant under the free speech and press and due process provisions of the First and Fifth Amendments to the United States Con-

stitution, in that it purports to authorize Customs to condemn a work as obscene without notice or adversary proceedings.

D. It violates the rights guaranteed to the defendants and claimant under the free speech and press and due process provisions of the First and Fifth Amendments to the United States Constitution, in that it purports to authorize the seizure of photographs upon mere probable cause, without evidence that the photographs are obscene, and in the face of evidence that they are not obscene.

E. It violates rights guaranteed to defendants and claimant under the free speech and press and due process provisions of the First and Fifth Amendments to the United States Constitution, in that it is void for vagueness.

#### COUNTER-CLAIM

### III

This Court has jurisdiction over this Counter-Claim pursuant to Rule 13 of the Federal Rules of Civil Procedure. The jurisdiction of this Court is also invoked under 19 U.S.C. § 1305; and 28 U.S.C. §§ 1331, 1345, 2201, 2202, 2282 and 2284.

### IV

19 U.S.C. § 1035 provides in relevant part as follows:

(a) All persons are prohibited from importing into the United States from any foreign country any book, pamphlet, paper, writing, advertisement, circular, print, picture, or drawing containing any matter advocating or urging treason or insurrection against the United States, or forcible resistance to any law of the United States, or containing any threat to take the life of or inflict bodily harm upon any person in the United States, or any obscene book, pamphlet, paper, writing, advertisement, circular, print, picture, drawing, or other representation, figure, or image on or of paper or other material, or any cast, instrument, or other article which is obscene or immoral, . . . . No such articles whether imported separately or contained in packages with other goods entitled to entry, shall be admitted to entry; and all such articles and, unless it appears to the satisfaction of the collector that the obscene or other prohibited articles contained in the package were in-

closed therein without the knowledge or consent of the importer, owner, agent, or consignee, the entire contents of the package in which such articles are contained, shall be subject to seizure and forfeiture as hereinafter provided: . . . . *Provided further*, That the Secretary of the Treasury may, in his discretion, admit the so-called classics or books of recognized and established literary or scientific merit, but may, in his discretion, admit such classics or books only when imported for noncommercial purposes.

Upon the appearance of any such book or matter at any customs office, the same shall be seized and held by the collector to await the judgment of the district court as hereinafter provided; and no protest shall be taken to the United States Customs Court from the decision of the collector. Upon the seizure of such book or matter the collector shall transmit information thereof to the district attorney of the district in which is situated the office at which such seizure has taken place, who shall institute proceedings in the district court for the forfeiture, confiscation, and destruction of the book or matter seized. Upon the adjudication that such book or matter thus seized is not of the character the entry of which is by this section prohibited, it shall not be excluded from entry under the provisions of this section.

In any such proceeding any party in interest may upon demand have the facts at issue determined by a jury and any party may have an appeal or the right of review as in the case of ordinary actions or suits.

## V

The said statute, 19 U.S.C. § 1305, on its face and as construed and applied herein, violates the rights guaranteed to the counter-claimant under the free speech and press, due process and equal protection provisions of the First and Fifth Amendments to the United States Constitution, in the following respects:

A. The statute is an impermissible prior restraint on freedom of expression in that it purports to exclude from the United States photographs to be used in a book limited to sale to adults and advertised in a tasteful fashion which will not invade the sensibilities or privacy of the general public. *Stanley v. Georgia*, 394 U.S. 557; *Stein v. Batchelor*, 300 F. Supp 602 (D.C. Texas

1969); *Luros v. Younger, et al.*, United States District Court for the Central District of California, No. 69-432-IH.

B. The statute violates the rule laid down by the United States Supreme Court in *Freedman v. Maryland*, 380 U.S. 51, and *Teitel Film Corp. v. Cusack*, 390 U.S. 139, which requires that any restraint prior to judicial determination can be imposed only briefly and must be specifically provided for by statute.

C. The statute violates the rule of *Quantity of Copies of Books v. Kansas*, 378 U.S. 205, in that it purports to authorize Customs to condemn a work as obscene without notice or adversary proceedings. *United States v. 18 Packages of Magazines*, 238 F. Supp. 846; *Rizzi etc. v. Blount etc., et al.*, United States District Court for the Central District of California, No. 69-64-R.

D. The statute, purporting to authorize the seizure of a motion picture film upon mere probable cause, without evidence that the film is obscene and in the face of evidence that it is not obscene, violates the rule established in *United States & Postmaster General v. The Book Bin*, United States District Court for the Northern District of Georgia, Atlanta Division, Civil Action No. 12812, unreported.

E. The statute, by reason of the vagueness and ambiguity of its language, the lack of ascertainable standards, the omission of any requirement of scienter, the vesting of unfettered discretion in an administrative agency to suppress speech and press as allegedly obscene, abridges the exercise of freedoms of speech and press and deprives counter-claimant of liberty and property without due process of law.

## VI

Counter-claimant has suffered great and irreparable damages as a result of the United States' wrongful conduct for which counter-claimant has no adequate remedy at law.

## VII

There is a bona fide dispute between the parties consisting of the following:

A. The United States contends that the statute in question, 19 U.S.C. § 1305, is in all respects valid and constitutional, and specifically does not violate the constitutional guarantees as



set forth in Paragraph V, subparagraphs A, B, C, D and E hereof.

B. Counter-claimant contends that the statute in question, 19 U.S.C. § 1305, on its face and as construed and applied, violates constitutional guarantees as set forth in Paragraph V, subparagraphs A, B, C, D and E hereof.

WHEREFORE, defendants, claimant and counter-claimant pray:

1. That plaintiff's Complaint be dismissed.

2. That this Court issue a temporary injunction, preliminary injunction and final injunction, restraining and enjoining the United States, and its agents, servants, employees and attorneys and all persons in active concert or participating with it, from any proceedings, acts or other conduct enforcing the provisions of 19 U.S.C. § 1305 against counter-claimant in relation to the photographs named in the Complaint, and from withholding from counter-claimant the said photographs named in the Complaint; and directing the United States to forthwith deliver the said photographs to counter-claimant forthwith.

3. That counter-claimant have a judgment and decree of this Court declaring his rights and status, and more particularly adjudicating that:

A. 19 U.S.C. § 1305, on its face and as construed and applied herein, violates rights guaranteed to the counter-claimant under the free speech and press and due process provisions of the First and Fifth Amendments to the United States Constitution, in that it purports to exclude from the United States photographs to be used in a book limited to sale to adults and advertised in a tasteful fashion which will not invade the sensibilities or privacy of the general public.

B. 19 U.S.C. § 1305, on its face and as construed and applied herein, violates the rights guaranteed to the counter-claimant under the free speech and press and due process provisions of the First and Fifth Amendments to the United States Constitution, in that it fails to provide adequate procedural safeguards against undue suppression of protected expression by failing to provide for speedy judicial determination.

C. 19 U.S.C. § 1305, on its face and as construed and applied herein, violates the rights guaranteed to the counter-claimant under the free speech and press and due process provisions of the First and Fifth Amendments to the United States Constitution, in that it purports to authorize Customs to condemn a work obscene without notice or adversary proceedings.



D. 19 U.S.C. § 1305, on its face and as construed and applied herein, violates rights guaranteed to the counter-claimant under the free speech and press and due process provisions of the First and Fifth Amendments to the United States Constitution, in that it purports to authorize the seizure of photographs upon mere probable cause, without evidence that the photographs are obscene and in the face of evidence that they are not obscene.

E. 19 U.S.C. § 1305, on its face and as construed and applied herein, violates rights guaranteed to the counter-claimant under the free speech and press and due process provisions of the First and Fifth Amendments to the United States Constitution, in that it is void for vagueness.

F. The photographs named in the Complaint are entitled to protection from all governmental infringement by the provisions of the First Amendment to the United States Constitution.

4. To convene for the purpose of hearing and determining the application for a preliminary injunction of this cause, a statutory court of three judges, pursuant to the provisions of 28 U.S.C. § 2282, at least one of whom shall be a Circuit Judge, in accordance with the provisions of 28 U.S.C. § 2284.

5. The counter-claimant be given all such other, further and different relief as this Court may deem just.

STANLEY FLEISHMAN,  
*Attorney for Defendants,  
Claimant and Counter-claimant.*

United States District Court  
Central District of California

Civil No. 69-2242-F

UNITED STATES OF AMERICA, PLAINTIFF

v.

THIRTY-SEVEN (37) PHOTOGRAPHS, DEFENDANTS  
MILTON LUROS, CLAIMANT

NOTICE OF MOTION TO CONVENE A THREE-JUDGE COURT PURSUANT  
TO TITLE 18 U.S.C. SECTIONS 2282, 2284

TO: WM. MATTHEW BYRNE, JR., UNITED STATES ATTORNEY; FREDERICK M. BROSION, JR., ASSISTANT UNITED STATES ATTORNEY; AND LARRY L. DIER, ASSISTANT UNITED STATES ATTORNEY:

PLEASE TAKE NOTICE that counter-claimant will move this Court in the Courtroom of the Honorable Warren J. Ferguson, United States Court House, 312 North Spring Street, Los Angeles, California on the 17th day of November, 1969, at 10:00 A.M., or as soon thereafter as counsel can be heard, for an order to convene a three-judge District Court pursuant to Title 18 U.S.C. §§ 2282, 2284, on the ground that the statute under which the Complaint was filed (Title 19 U.S.C. § 1305), on its face and as construed and applied, is unconstitutional, null and void.

The said motion will be based upon all the papers on file herein.

DATED: This 20th day of November, 1969.

STANLEY FLEISHMAN,  
*Attorney for Defendants and Counter-Claimant.*

United States District Court  
Central District of California

Civil No. 69-2242-F

UNITED STATES OF AMERICA, PLAINTIFF

v.

THIRTY-SEVEN (37) PHOTOGRAPHS, DEFENDANTS

MILTON LUBOS, CLAIMANT

STIPULATION

IT IS HEREBY STIPULATED by and between the parties, through their respective counsel, that the Motion for the Convening of a Three-Judge Court may be heard on November 17, 1969 at 10:00 A.M.

IT IS FURTHER STIPULATED that the plaintiff waives time, and specifically consents to the hearing on the Motion on said date.

DATED: This 13th day of November, 1969.

STANLEY FLEISHMAN,  
*Attorney for Defendants and Claimant.*

DATED: This — day of November, 1969.

WM. MATTHEW BYRNE, Jr.,  
*United States Attorney.*  
FREDERICK M. BROGIO, Jr.,  
*Assistant U.S. Attorney,*  
*Chief, Civil Division.*

LARRY L. DIER,  
*Assistant U.S. Attorney.*

By LARRY L. DIER,  
*Attorneys for Plaintiff.*

IT IS SO ORDERED.

DATED: THIS 14 DAY OF NOVEMBER, 1969.

WARREN J. FERGUSON  
*United States District Judge.*

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
CIVIL MINUTES - GENERAL

Case No. 69-2262-F

Date November 17, 1969

Title U.S.A. -v- Thirty-seven (37) photographs

DOCKET ENTRY

Ent procs. Upon Mak Ct's own Mot. Hrg on Claimant's mot to convene  
a 3 judge Ct ord cont'd to 11/18/69 at 9:30 A. M. (Y)

PRESENT:

HON. WARREN J. FERGUSON, JUDGE

K. J. Murphy, Jr.  
Deputy Clerk

None Present  
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:

Larry L. Dier  
Assistant U. S. Attorney

ATTORNEYS PRESENT FOR DEFENDANTS:

Stanley Fleishman  
for Claimant

PROCEEDINGS: Claimant's motion to convene a three-judge Court.

IT IS ORDERED, on the Court's own motion, that the hearing on the  
claimant's motion is continued to November 18, 1969 at 9:30 A. M.

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. 69-2242-F

Date November 18, 1969

Title U.S.A. -v- Thirty-Seven (37) photographs

DOCKET ENTRY

Ent proc, Ct ords Deft's Mot fax to convene 3 judge Ct Granted.  
Atty Deft prep ord on Mot. Atty FM Deft's memo in suppt of Mot to  
convene 3 judge Ct. (F)

PRESENT:

HON. WARREN J. FERGUSON, JUDGE

F. J. Murphy, Jr.  
Deputy Clerk

Barbara Davidov  
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:

ATTORNEYS PRESENT FOR DEFENDANTS:

Larry L. Dier  
Assistant U. S. Attorney

Stanley Fleishman

PROCEEDINGS: Claimant's motion to convene a three-judge Court.

The Court and counsel confer.

The Court makes a statement and orders the motion to convene a three-judge court granted.

Attorney for the defendant is to prepare the order by November 21, 1969

The Court and counsel confer.

Filed the defendant's memorandum in support of the motion to convene a three judge court.

United States District Court Central District of California

Civil No. 69-2242-F

UNITED STATES OF AMERICA, PLAINTIFF

v.

THIRTY-SEVEN (37) PHOTOGRAPHS, DEFENDANTS

MILTON LUROS, CLAIMANT

ORDER FOR CONVENING OF THREE-JUDGE COURT

On November 18, 1969, the motion to convene a three-judge court, pursuant to Title 18 U.S.C. §§ 2282, 2284, came before the Court, the plaintiff appearing by Larry L. Dier, Assistant

United States Attorney, and the defendants, claimant and counter-claimant appearing by Stanley Fleishman.

The Court, having examined the file herein and heard oral argument, and being of the opinion that there is a substantial question as to whether Title 19 U.S.C. § 1305, on its face and as construed and applied, is unconstitutional, null and void,

THE COURT NOW ORDERS the convening of a three-judge District Court, pursuant to Title 18 U.S.C. §§ 2282, 2284, to determine whether the plaintiff, the UNITED STATES OF AMERICA, should be enjoined from enforcing Title 19 U.S.C. § 1305.

DATED: This 20th day of November, 1969.

WARREN J. FERGUSON,  
*United States District Judge.*

APPROVED AS TO FORM:

STANLEY FLEISHMAN,  
*Attorney for Defendants,  
Claimant and Counter-Claimant.*  
WM. MATTHEW BYRNE, Jr.,  
*U.S. Attorney.*  
FREDERICK M. BROSILO, Jr.,  
*Assistant U.S. Attorney,  
Chief, Civil Division.*  
LARRY L. DIER,  
*Assistant U.S. Attorney.*  
By LARRY L. DIER,  
*Attorneys for Plaintiff.*

United States District Court  
Central District of California

Civil No. 69-2242-F

UNITED STATES OF AMERICA, PLAINTIFF

v.

THIRTY-SEVEN (37) PHOTOGRAPHS, DEFENDANTS  
MILTON LUBOS, CLAIMANT

STIPULATION

THE COURT, having ordered the convening of a three-judge District Court pursuant to 18 U.S.C. §§ 2282, 2284. and

this being a matter where a speedy determination is constitutionally required:

IT IS HEREBY STIPULATED by and between the parties, through their respective counsel, and subject to the Order of the Court, as follows:

1. Defendants, claimant and counter-claimant shall file an opening brief on or before December 2, 1969;

2. Plaintiff shall file its brief on or before December 9, 1969;

3. Defendants, claimant and counter-claimant shall file their reply brief on or before December 16, 1969.

DATED: This 18th day of November, 1969.

STANLEY FLEISHMAN,  
Attorney for Defendants,  
Claimant and Counter-Claimant.

DATED: This 20th day of November, 1969.

WM. MATTHEW BYRNE, Jr.,  
U.S. Attorney.

FREDERICK M. BROSO, Jr.,  
Assistant U.S. Attorney,  
Chief, Civil Division.

LARRY L. DIER,  
Assistant U.S. Attorney.  
By LARRY L. DIER,  
Attorneys for Plaintiff.

IT IS SO ORDERED this 20th day of November, 1969.

WARREN J. FERGUSON,  
United States District Judge.

In the United States District Court  
Central District of California

Civil No. 69-2242-F

UNITED STATES OF AMERICA, PLAINTIFF

v.

THIRTY-SEVEN (37) PHOTOGRAPHS, DEFENDANTS

MILTON LUROS, CLAIMANT

ORDER SETTING DATE OF HEARING AND REGARDING STIPULATION  
OF FACTS

The parties are notified that the date for hearing oral argument before the three-judge district court on the issue framed

by the counterclaim is set for Friday, January 9, 1970, at 10:00 A.M. in Courtroom 15 of the United States Courthouse in Los Angeles.

It is suggested to the parties that a stipulation of facts be entered into and filed no later than December 19, 1969, to constitute the facts of the case in regard to the counterclaim.

In the event that the parties are unable to arrive at such a stipulation, they are ordered to contact the clerk of his court for a date for a pre-trial conference.

IT IS FURTHER ORDERED that the clerk serve copies of this order by United States mail upon counsel for the parties appearing in this action and provide a copy for Judges Barnes and Curtis.

NOVEMBER 26, 1969.

WARREN J. FERGUSON,  
*United States District Judge.*

United States District Court Central District of California

Civil No. 69-2242-F

UNITED STATES OF AMERICA, PLAINTIFF

v.

THIRTY-SEVEN (37) PHOTOGRAPHS, DEFENDANTS

MILTON LUROS, CLAIMANT

**STIPULATION OF FACTS IN REGARD TO THE COUNTER-CLAIM**

PURSUANT TO ORDER of the Court dated November 26, 1969, the parties hereto, through their respective counsel, stipulate to the following facts of the case in regard to the Counter-Claim:

1. On or about October 24, 1969, the claimant, Milton Luros, a citizen of the United States, returned to this country, following a visit to Europe. He arrived at Los Angeles, California on TWA Flight No. 761.

2. On October 24, 1969, Customs agents in Los Angeles, California seized from Milton Luros the 37 photographs named herein, together with a book entitled *Forbidden Erotica* by



Rowlansan, a book album of the works of Peter Fende, and a "girlie" magazine. Attached hereto as APPENDIX A is Customs Receipt No. 586522.

3. On or about October 31, 1969, the District Director of the Bureau of Customs wrote claimant, advising him that the Bureau of Customs had referred the matter to the United States Attorney for the Central District of California for forfeiture action. A copy of the said letter is attached hereto as APPENDIX B.

4. On or about November 4, 1969, Stanley Fleishman, attorney for claimant, Milton Luros, wrote to the District Director of the Bureau of Customs requesting the forthwith delivery of the seized material. A copy of the said letter is attached hereto as APPENDIX C.

5. On or about November 5, 1969, Larry Dier, Assistant U.S. Attorney, released to Stanley Fleishman, attorney for claimant, Milton Luros, the following material, seized by Customs on October 24, 1969, as stated above: a book entitled *Forbidden Erotica* by Royslansan, a book album of the works of Peter Fende, and a "girlie" magazine. A copy of a Release is attached hereto as APPENDIX D.

6. On or about November 6, 1969, the plaintiff instituted the within action.

7. On or about November 14, 1969, defendants and claimant filed an Answer and Counter-Claim.

8. Some or all of the 37 photographs seized were intended to be incorporated in a hard cover edition of *The Kama Sutra of Vatsyayana*, which book describes candidly a large number of sexual positions. The book has been distributed widely throughout the Nation and has been acclaimed as a work of substantial value. At the time of the seizure of the 37 photographs, the claimant, Milton Luros, advised the Customs Inspector that at least some of the photographs were intended for inclusion in the book *The Kama Sutra*. Claimant Milton Luros showed the Customs inspector the title pages of *The Kama Sutra* which the photographs were to accompany, and requested the Customs inspector to keep the photographs and title pages together. This the Customs inspector declined to do. Attached to the original of this Stipulation are the cover pages of *The Kama Sutra* as

APPENDIX E. Attached to the copy of the Stipulation are Xerox copies thereof.

DATED: This 15th day of December, 1969.

STANLEY FLEISHMAN,  
*Attorney for Defendants and Claimant.*

DATED: This 19th day of December, 1969.

WM. MATTHEW BYRNE, Jr.,  
*United States Attorney.*

FREDERICK M. BROSI, Jr.,  
*Assistant U.S. Attorney,  
Chief, Civil Division.*

LARRY L. DIER,  
*Assistant U.S. Attorney.*

By LARRY L. DIER,  
*Attorney for Plaintiff.*



November 4, 1969

William R. Knoke, District Director  
Bureau of Customs  
Port of Los Angeles - Long Beach  
300 South Ferry Street  
Terminal Island, California 90731

Re: Your 2720-10655, 10/24/69 - Mr. Milton Luros

Dear Mr. Knoke:

Your letter of October 31, 1969 addressed to my client, Milton Luros, has been turned over to me for reply.

I am more than a little surprised at the seizure in this matter since it plainly involves works of art by artists of renown. As you are undoubtedly aware, United States Customs has in the past permitted the importation of erotic art of a wide variety, including Japanese, Indian, Roman and Greek works. Grove Press recently published a book of erotic art by the Kronhausen's and more recently published the erotic art of Rowlandsan. The Rowlandsan pictures held by Customs are identical to those appearing in the Grove Press book.

On behalf of my client, I respectfully request the forthwith delivery of the seized material, on the grounds that: (1) the material is protected by the First Amendment; (2) the material is not being imported for distribution to minors, nor to be thrust upon unwilling viewers; and (3) the statute under which the seizure was made and pursuant to which the material is held is unconstitutional on its face and as construed and applied.

Very truly yours,

STANLEY FLEISHMAN

SF:cas

cc: Larry Dior, Assistant United States Attorney  
Federal Building, Los Angeles

(APPENDIX C)

November 5, 1969

RELEASE OF MATERIAL SEIZED BY CUSTOMS

STANLEY FLEISHMAN, attorney for MILTON LUROS, hereby acknowledges receipt of the following material retained by Customs on October 24, 1969, and receipted for in No. 586522 by the Customs Bureau:

1. One book album by Peter Fendi;
2. One book of Forbidden Erotica by Rowlandsan;
3. One magazine - "Girdle Girl".

It is understood that 37 photographs are being held by Customs for further consideration by Customs.

  
STANLEY FLEISHMAN

THE ABOVE IS ACCURATE.

---

LARRY DIER  
Assistant U. S. Attorney

(APPENDIX D)

21

THE

# KAMA SUTRA

OF

## VATSYAYANA.

TRANSLATED FROM THE SANSKRIT.

IN SEVEN PARTS,

WITH

PREFACE, INTRODUCTION,

AND

CONCLUDING REMARKS.



BENARES:  
PRINTED FOR THE HINDOO KAMA SHAstra SOCIETY

1883.  
FOR PRIVATE CIRCULATION ONLY.

(APPENDIX E)





UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. 69-2262-F

Date JANUARY 9, 1970

Title U.S.A. -v- 37 Photographs

DOCKET ENTRY

Ent procs, the matter is argued before the 3 judge Court and the Court orders the matter submitted. (Barnes, Curtis & Ferguson)

PRESENT: STANLEY N. BARNES, U. S. Circuit Judge  
JESSE W. CURTIS, U. S. District Judge  
HON. WARREN J. FERGUSON, JUDGE

K. J. Murphy, Jr.  
Deputy Clerk

Barbara Davidow  
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:

Larry L. Dier  
Assistant U. S. Attorney

ATTORNEYS PRESENT FOR DEFENDANTS:

Stanley Fleishman  
for Claimant.

**T**  
PROCEEDINGS: ORAL ARGUMENT:

The Court convenes at 10:17 A. M.

Attorney Fleishman makes a statement in support of the claimant.

The Attorney for the Plaintiff makes a statement in support of the Plaintiff.

Attorney Fleishman replies.

The Court orders the matter submitted.

The Court recesses at 11:55 A. M.

In the United States District Court  
Central District of California

Civil No. 69-2242-F

UNITED STATES OF AMERICA, PLAINTIFF

v.

THIRTY-SEVEN (37) PHOTOGRAPHS, DEFENDANTS

MILTON LUROS, CLAIMANT

MEMORANDUM OPINION

Before: BARNES, *Circuit Judge*, and CURTIS and FERGUSON, *District Judges*.

FERGUSON, *District Judge*:

This is an action before a three-judge district court, convened pursuant to 28 U.S.C. §§ 2282 and 2284, to determine whether the government should be enjoined from enforcing 19 U.S.C. § 1305. That statute prohibits all persons from importing into the United States any obscene picture or book. It provides that when such an item appears at a customs office it shall be seized and held to await the judgment of a district court.

On October 24, 1969, Milton Luros returned to Los Angeles from a visit to Europe, arriving by plane. In his personal luggage he carried 37 photographs. In the course of an inspection, customs agents acting under authority of § 1305 seized the photographs as obscene. The agents referred the seizure to the United States Attorney, and on November 6, 1969, the government filed its complaint seeking judicial authority to enforce the forfeiture of the photographs.

On November 14, 1969, the claimant filed an answer contending the photographs were not obscene. His counterclaim contends that § 1305 violates the First and Fifth Amendments, and seeks an injunction to restrain the government from enforcing the statute in relation to the 37 photographs.

The case presents a five-fold constitutional attack on § 1305, claiming that:

(1) It excludes from the United States photographs imported for use by adults in the privacy of their home.

(2) It excludes photographs which are to be distributed to adults only and in a manner which will not invade the sensitivities or privacy of anyone.

(3) It permits customs agents to seize and hold pictures without a time restraint.

(4) It permits a seizure prior to an adversary hearing.

(5) It is unconstitutionally vague.

The cornerstone of the attack, of course, is *Stanley v. Georgia*, 394 U.S. 557 (1969). There the Supreme Court minimally held that the First Amendment prohibits the making of mere private possession of obscene material a crime. The lower courts now are faced with whether *Stanley* means more than that. See *Karalezis v. Byrne*, Civil No. 69-665-J (D. Mass., Nov. 28, 1969); *Stein v. Batchelor*, 300 F. Supp. 602 (N.D. Texas 1969).

The claimant requests this court to hold that *Stanley* means that the First Amendment forbids any restraint of obscenity unless (1) it falls in the hands of children, or (2) it intrudes upon the sensitivities or privacy of the general public. Without rejecting this argument, we decide the case based upon the narrowest construction of *Stanley*.

19 U.S.C. § 1305 reaches all obscene works. It prohibits an adult from importing an obscene book or picture for private reading or viewing, an activity which is constitutionally protected. As stated in *Stanley*, the right to read necessarily protects the right to receive. The claimant does not contend, however, that he was merely going to bring the pictures into his own home. He admits that it is his intention to incorporate the pictures in a book for distribution.

The admission of claimant, that is, to distribute and not to view privately, does not prohibit his attack on invalidity of the statute. *Freedman v. Maryland*, 380 U.S. 51 (1965), grants the claimant standing for it holds that in determining the validity of a statute in relation to the First Amendment, a court must determine what the statute can do. If the statute can violate the freedom of speech and press, then it is invalid. This it clearly does. It prohibits a person who may constitutionally view pictures of the right to receive them. To quote from Justice Brennan's concurring opinion in *Lamont v. Postmaster General*, 381 U.S. 301, 308 (1965), "[T]he right to receive publications is . . . a fundamental right. The dissemination of

ideas can accomplish nothing if otherwise willing addressees are not free to receive and consider them. It would be a barren marketplace of ideas that had only sellers and no buyers."

The First Amendment cannot be construed to permit those who have funds for foreign travel to bring back constitutionally protected literature while prohibiting its access by the less affluent.

A second attack on the statute further involves *Freedman v. Maryland*, *supra*. Any system of censorship must contain, at the minimum, the following procedural safeguards if it is not to contravene the First and Fifth Amendments, (1) any restraint prior to judicial determination can be imposed only briefly, and (2) the censor in a specified brief period will go to court. The safeguards must be contained in the statute or by judicial rule. Section 1305 is a system of censorship by customs agents and is barren of safeguards.

In the context of this case, the claimant concedes that the government has moved rapidly for a judicial determination of the forfeiture. Yet from the date of the seizure to January 9, 1970, the date of the court hearing, 76 days had passed. All concede that under present statutory procedures it could not have been accomplished any sooner. Section 1305 does not prohibit customs agents from long delaying judicial determination. The First Amendment does not permit such discretion.

We are aware of *United States v. One Carton Positive Motion Picture Film*, 367 F. 2d 889, 899 (2d Cir. 1966), which stated, "[S]pecific time limitations on administrative action are unnecessary and would serve only to inject inflexibility into the regulatory scheme . . ." That may or may not be true. We only note that such is contrary to the explicit holding in *Freedman*, *supra* at 58-59, "[T]he exhibitor must be assured, by statute or authoritative judicial construction, that the censor will, within a specified brief period . . . go to court . . ." We must follow *Freedman*.

We decline to consider as unnecessary the remaining attacks on the constitutionality of § 1305, i.e., (1) vagueness and (2) the law set forth in *Marcus v. Search Warrant*, 367 U.S. 717 (1961), and *A Quantity of Copies of Books v. Kansas*, 378 U.S. 205 (1964).

Pursuant to the provisions of Rule 52 of the Federal Rules of Civil Procedure, this memorandum opinion shall constitute the

court's findings of fact and conclusions of law.

In accordance with the provisions of Rule 58, a judgment shall be separately prepared and entered as follows:

1. Pursuant to 28 U.S.C. § 1253, this is an order in a civil action heard and determined by a district court of three judges granting a permanent injunction after notice and hearing.

2. The United States and its agents are restrained and enjoined from enforcing the provisions of 19 U.S.C. § 1305 against the claimant Milton Lueros, in relation to the 37 photographs seized by customs agents in Los Angeles, California, on October 24, 1969.

3. The United States shall deliver said photographs to the claimant.

4. 19 U.S.C. § 1305, on its face and as construed and applied, violates the rights guaranteed to the claimant under the free speech and press and due process provisions of the First and Fifth Amendments to the United States Constitution.

5. The enforcement of this judgment shall be stayed for a period of 30 days, in order to preserve to the government its right of appeal.

Dated this 27th day of January, 1970.

WARREN J. FERGUSON,  
*United States District Judge.*

We Concur:

STANLEY N. BARNES,  
*United States Circuit Judge.*  
JESSE W. CURTIS,  
*United States District Judge.*

In the United States District Court  
Central District of California

Civil No. 69-2242-F

UNITED STATES OF AMERICA, PLAINTIFF

v.

THIRTY-SEVEN (37) PHOTOGRAPHS, DEFENDANTS

MILTON LUROS, CLAIMANT

## JUDGEMENT ON COUNTERCLAIM

The court having filed its memorandum opinion which constitutes its findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, and in accordance therewith, judgment is decreed in favor of the claimant, Milton Lueros, on his counterclaim filed November 14, 1969, and against the United States of America, as follows:

1. Pursuant to 28 U.S.C. § 1253, this is an order in a civil action heard and determined by a district court of three judges granting a permanent injunction after notice and hearing.

2. The United States and its agents are restrained and enjoined from enforcing the provisions of 19 U.S.C. § 1305 against the claimant Milton Lueros, in relation to the 37 photographs seized by customs agents in Los Angeles, California, on October 24, 1969.

3. The United States shall deliver said photographs to the claimant.

4. 19 U.S.C. § 1305, on its face and as construed and applied, violates the rights guaranteed to the claimant under the free speech and press and due process provisions of the First and Fifth Amendments to the United States Constitution.

5. The enforcement of this judgment shall be stayed for a period of 30 days, in order to preserve to the government its right of appeal.

Dated this 27th day of January, 1970.

STANLEY N. BARNES,  
*United States Circuit Judge.*

JESSE W. CURTIS,  
*United States District Judge.*

WARREN J. FERGUSON,  
*United States District Judge.*

United States District Court  
Central District of California

Civil No. 69-2242-F

UNITED STATES OF AMERICA, PLAINTIFF

v.

THIRTY-SEVEN (37) PHOTOGRAPHS, DEFENDANT

MILTON LUROS, CLAIMANT

## NOTICE OF APPEAL

Plaintiff, United States of America, hereby appeals to the United States Supreme Court under the provisions of 28 U.S.C. §§ 2101 and 2282 from the Judgment on Counterclaim entered January 27, 1970, in this case.

The attorneys for the parties and their addresses are: For the plaintiff, United States of America, W. Matthew Byrne, Jr., United States Attorney, Frederick M. Brosio, Jr., Assistant U.S. Attorney, Chief, Civil Division, and Larry L. Dier, Assistant U.S. Attorney, United States Court House, 312 North Spring Street, Los Angeles, California 90012; for the claimant, Milton Luros, Stanley Fleishman, Suite 700, Taft Building, 1680 Vine Street, Hollywood, California 90028.

DATED: February 26, 1970.

WM. MATTHEW BYRNE, Jr.,  
*United States Attorney.*

LARRY L. DIER,  
*Assistant U.S. Attorney,*  
*Attorneys for Plaintiff.*



# **In the Supreme Court of the United States**

**No. 133 —, October Term, 1970**

**UNITED STATES, APPELLANT**

**v.**

**THIRTY-SEVEN (37) PHOTOGRAPHS, MILTON LUROS, CLAIMANT**

**APPEAL from the United States District Court for the Central District of California.**

**The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.**

**OCTOBER 12, 1970.**

**(30)**

